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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Billed Party Preference ) CC Docket No. 92-77  
for 0+ InterLATA Calls )

COMMENTS OF ROBERT CEFAIL & ASSOCIATES  
AMERICAN INMATE COMMUNICATIONS, INC.

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## SUMMARY

Robert Cefail & Associates American Inmate Communications, Inc. ("RC&A"), a provider of specialized inmate telephone services to state, county and federal correctional authorities throughout the United States, hereby submits these comments urging the Commission not to require a system of billed party preference ("BPP") for inmate pay telephones, if the Commission mandates BPP for other 0+ and 0- interLATA calls.

Application of BPP to the specialized inmate telephone services market will drastically reduce service quality and security controls in prison environments, and dramatically increase correctional institutions' costs for providing telephone services to the inmate population. As applied to inmate telephone services, BPP is technologically inferior to the reliable equipment and systems which the competitive inmate telephone services market has brought to prison institutions around the country. The presubscription system has made it economical for prison institutions to make telephone services more accessible to inmates, without sacrificing the prison authorities' access to security controls and monitoring capabilities in provisioning these services. Contrary to secure automated systems used in correctional institutions, BPP will require live operator intervention on many inmate calls that will increase harassment of operators and call recipients, at great risk to prison discipline and social welfare.

RC&A urges the Commission to exempt inmate phone services from any BPP system it may adopt in order to prevent these substantial harms from occurring. Such an exemption would be fully consistent with the traditional federal and state recognition of their unique regulatory status. Moreover, an exemption would recognize the individualized needs of the inmate calling market which the current presubscription system meets by allowing authorities to install economical and efficient inmate telephone systems that do not compromise discipline and control in correctional institutions.

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Robert Cefail & Associates American Inmate Communications, Inc. ("RC&A"), a provider of specialized inmate telephone services to state, county and federal correctional facilities throughout the United States, hereby submits, by its undersigned counsel, its comments on the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the billed party preference ("BPP") proceeding.<sup>1/</sup>

RC&A submits that application of BPP to inmate telephone services will dramatically reduce service quality and security controls in controlled prison environments, and ultimately lead to higher costs for inmate telephone services provided to prison institutions. These burdens will be borne by inmate families as well as taxpayers that fund these public institutions. As detailed below, RC&A believes that the public interest clearly requires the Commission to exempt inmate-only telephone services

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<sup>1/</sup> FCC 94-117 (released June 6, 1994).

from BPP even if the Commission adopts BPP for other types of 0+ and 0- interLATA traffic.

## **I. INTRODUCTION AND BACKGROUND**

The Commission has invited additional comments in this proceeding on whether a BPP system for routing of 0-dialed interLATA calls should be adopted. The Commission has determined to "mandate BPP only if we conclude that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly measures."<sup>2/</sup> The Commission has acknowledged tentatively that application of BPP may pose special difficulties in the inmate environment, and seeks comment on whether there should be an exemption for inmate telephone services if the Commission decides to adopt BPP for other 0-dialed interLATA calls.<sup>3/</sup>

The Commission requires a more complete record on the following concerns specific to considering an exemption from BPP for inmate telephone services:

- First, the effectiveness and costs of controlling fraud originating on inmate lines with or without BPP;
- Second, whether local exchange carriers ("LECs") providing LIDB queries should be required to tariff

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<sup>2/</sup> Id. at ¶ 2.

<sup>3/</sup> In this context, "inmate telephone services" refers to collect call services made available to inmates, and does not refer to operator services available to the public, such as correctional administrators' phones or payphones in correctional institution lobbies.

some form of anti-fraud service (that presumably would be used in connection with inmate telephone calls); and

- Third, whether prisons should be exempted from BPP if they subscribe to an OSP that charges rates below that of the dominant carrier for interLATA and intraLATA calls.<sup>4/</sup>

## II. STATEMENT OF INTEREST

RC&A has a significant interest in this proceeding because it is a leading provider of specialized telecommunications services to state, county, and federal correctional facilities throughout the United States for use by inmates. As such, RC&A has substantial expertise in meeting the special needs of this market.

To prevent fraud and other abuses of inmate phone services, correctional facilities, unlike traditional aggregators which provide service to the "transient" users or the "public" at large, require effective ways to restrict the level and types of phone service available to inmates. RC&A has built a successful, highly competitive business that responds to the critical needs of prison administrators for reliable and secure inmate telephone services.

RC&A installs coinless pay telephones in prison facilities for inmate use which process only collect calls. All calls placed by inmates must be accepted by and billed to the receiving

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<sup>4/</sup> Id. at ¶ 51.

party; calling cards and other forms of payment cannot be accepted. As part of its service, RC&A screens many types of phone calls, including "1+," "800/950/10XXX," "911," and directory assistance calls. Moreover, RC&A programs telephones to block calls directed to specified telephone numbers. Thus, for instance, at the request of prison authorities, RC&A often blocks telephone calls by inmates to judges, jury members, witnesses, emergency agencies, and known victims of harassing phone calls. As an integral part of its service, RC&A arranges for the billing and collection of the collect calls completed from its telephones.

As detailed below, RC&A urges the Commission to exempt BPP for inmate telephone services providers if it adopts BPP for other 0-dialed interLATA calls. The needs of correctional facilities and the public at large for prevention of abusive inmate behavior such as harassing and fraudulent collect calls, warrant an exception for the niche inmate services market. Application of BPP will result in a drastic technological setback in the effective controls available to prison authorities to prevent inmate abuses. BPP will also deny prison administrators the ability to directly monitor the inmate phone usage, an important element of preventing security leaks in a prison facility. If the Commission applies BPP to the inmate market, it will destroy the public interest benefits of specialized inmate phone services, and impose security risks, administrative difficulties and higher costs on prison environments. For all of



these reasons, the Commission should not mandate BPP for inmate telephone services.

### **III. INMATE TELEPHONE SERVICES SHOULD NOT BE INCLUDED IN ANY BPP SYSTEM FOR 0-DIALED INTERLATA CALLS**

RC&A submits -- and numerous prison authorities agree -- that application of BPP to inmate telephone services will diminish the quality and security of inmate calling services and drive up prison administration costs in the long term.<sup>5/</sup> RC&A and other specialized IXC's have made substantial technical progress in tailoring inmate telephone services to the specific needs of controlled prison environments pursuant to presubscription contracts negotiated with prison authorities.

Further, this Commission and numerous state regulators have already recognized that inmate telephone services are distinct from traditional operator services calls made by the transient public, and therefore should not be regulated in the same way. This regulatory policy should be extended to this proceeding.

Moreover, as applied to inmate telephone service, BPP is technologically inferior to inmate telephone services now provided. An exemption for inmate telephone services is necessary to prevent this technological setback. For all of these important reasons, the Commission should not mandate BPP for inmate telephone services.

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<sup>5/</sup> See generally, e.g., Comments of Adams County Detention Facility (filed July 8, 1994); Comments of Washoe County Detention Facility (filed July 8, 1994); Comments of Monmouth County Correctional Institution (filed July 8, 1994).

**A. BPP Will Degrade Service Quality and Threaten Security Controls In Prison Environments**

Under current presubscription arrangements, prison administrators have full negotiating range to demand assurances that an IXC providing inmate telephone services will provide a high level of service and equipment quality, and afford the prison maximum control over the phone services available to the inmate population. These contracts require that telephones and services are installed and maintained at a correctional institution in a manner that prevents perpetration of fraud and other criminal activity by inmates. Under the presubscription system, prison administrators can negotiate for features based on the particular circumstances of their facilities.

The presubscription system provides the additional benefit of competitive incentives for constant service improvement. Prison administrators can choose from one of many competing IXCs, and can replace an IXC to take advantage of better services if a particular arrangement proves unsatisfactory to the prison. Thus, the presubscription system provides competitive incentives to all inmate telephone service providers to make constant technological upgrades and maintain overall quality of services provided, or risk losing major accounts.

Indeed, the Mendocino County Correctional Facility has noted that the competitive incentives of presubscription arrangements are critical to maintaining a high level of service quality and equipment maintenance, since inmate telephone equipment takes

greater abuse than normal pay phones.<sup>6/</sup> Inmate service providers that maintain phones at correctional facilities often encounter cumbersome security measures and a stressful working environment while installing, maintaining, and repairing these phones. A pay phone provider that is not under a negotiated repair agreement may be unwilling to devote the resources necessary to install, maintain, and repair the equipment efficiently in a prison environment, which could compromise inmate morale and prison discipline.

Prison authorities filing in this proceeding have emphasized their needs for a single point of contact to control phone usage and security, and described how effectively presubscription to a single IXC meets their requirements.<sup>2/</sup> Correctional institutions, unlike locations which provide telephone services to the general public, require that telephone service to inmates be carefully limited in order to prevent fraud and other improper inmate behavior, including harassment of call recipients and live operators. For example, facilities typically allow prisoners to place calls through coinless telephones that only allow calls that are accepted by and billed to the receiving party. This restriction is rooted in the need to eliminate the opportunity for fraud from inmate telephones while allowing the inmate effective phone access to his or her family and counsel.

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<sup>6/</sup> See Comments of Mendocino County Correctional Facility (filed July 5, 1994) at 2.

<sup>2/</sup> See, e.g., Comments of Monmouth County Correctional Institution (filed July 8, 1994) at 1.

Moreover, in response to requests of prison administrators, many inmate phone service providers have installed completely automated calling systems at prisons. System automation prevents harassment of live operators as well as call recipients that unfortunately can be rampant in non-automated inmate phone service systems. Inmate phone service providers also deploy call screening technology for public safety purposes which identify calls directed to certain telephone numbers where receiving parties have refused to accept prison calls on a predetermined number of occasions. With such screening capability, prison authorities can -- almost as soon as the prisoner arrives at a facility -- directly program the phone equipment and facilities not to complete calls to entities such as judges, jurors, witnesses, emergency agencies and known victims of harassing phone calls. Unspecialized carriers may lack the ability to provide these services in the timely manner which public safety requires, and will certainly lack any competitive incentive to do so under BPP.

Consequently, rather than improving upon the service quality features already available today under presubscription arrangements, BPP will degrade security controls and service quality. BPP cannot provide the same high level of control and careful supervision of inmate calls as the telephone systems and equipment deployed by RC&A and other specialized inmate providers. These automated, secure inmate calling systems -- that have virtually eliminated fraud in many prisons and reduced

harassment and other criminal activity -- will be rendered inoperable under BPP. Given the threat to security and reliability which BPP poses for prison phone services, it would not further the public interest to send all inmate calls into the public switched network absent clear assurances that IXC operators will handle inmate calls pursuant to proper safeguards. Because virtually all calls placed by inmates are collect, live IXC operators will have to be available and properly trained to place such calls.

RC&A doubts that live operators of all IXCs can handle this specialized task as effectively as niche providers like RC&A. A return to live operator handling conflicts with the growing preference of prison administrators for automated telephone features for inmate calling services. Inmates will have increased opportunities to harass innocent third parties and to perpetuate fraud through manipulation of live operators. In the long run, added inmate call monitoring burdens will be foisted on LECs, IXCs, and prison administrators, driving up costs and draining scarce administrative resources.

Automated systems installed in many institutions have either successfully eliminated or substantially minimized fraud and harassment by inmate callers. No analog to these automated systems exists in a BPP scenario to avoid inmate harassment of live operators and call recipients. Indeed, in a recent resolution, the National Association of Regulatory Utility Commissioners ("NARUC") Communications Committee has urged the

Commission to study the implications of BPP on fraud in the inmate institution environment.<sup>8/</sup> It would clearly be against the public interest to apply BPP to inmate telephone services and invite the perpetration of these unlawful activities.

**B. LIDB-Based Anti-Fraud Services In a BPP System Will Not Provide the Same Level of Focused Security and Efficiency That Inmate Service Providers Have Developed and Already Provide To Prisons**

RC&A does not believe that a LIDB-based anti-fraud service is a viable alternative to the specialized services of inmate providers deployed today under presubscription contracts, which not only curb fraud but affirmatively prevent harassment opportunities. Network based features such as LIDB cannot perform both tasks as effectively as current inmate telephone systems.

The anti-fraud capability of the LIDB is untested in the inmate market, and may likely drive up operating costs for all IXC's. If LIDB-based anti-fraud service by LECs fails to provide adequate security controls for inmate calls, it is likely to be far more difficult to ascertain where the breakdown in security occurred in the network. The systems of specialized IXC's like RC&A prevent fraud from happening at the source directly and cost-effectively. By contrast, a network-based anti-fraud service will require coordination among different carriers and parties to be successful in battling fraud. Under BPP, IXC's serving prisons will lose the ability to rapidly upgrade and

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<sup>8/</sup> See Communications Daily, July 29, 1994 at 3.

adjust security procedures and technologies as necessary for institutions that experience particularly severe problems. LECs and IXC's not specializing in the inmate market will lack any such competitive incentive to respond quickly to these problems.

The presubscription system gives IXC's serving prisons a great incentive to be responsive to prison authority concerns because their entire business depends on it. RC&A submits that it is much simpler and faster to isolate and prevent fraud where a single, preselected IXC has the responsibility to carry all inmate collect calls from a particular facility.

Prison authorities have confirmed this proposition in their comments.<sup>9/</sup> In short, any breakdown of security caused by uncontrolled inmate phone usage could threaten the sanctity of the justice system. When witnesses, victims, judges, attorneys or other members of the public are harassed or defrauded by inmate phone usage, prison authorities are prevented from performing one important part of their job, keeping inmates incarcerated to prevent harm to the public. Prison authorities recognize the great potential for a breakdown in phone system security to compromise discipline in their facilities, and

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<sup>9/</sup> See, e.g., Comments of Monmouth County Correctional Institution at 1; Comments of Onondaga County Department of Correction (filed July 7, 1994) at 1; Comments of the Frederick County Adult Detention Center (filed July 5, 1994) at 2; Comments of the Rhode Island Department of Corrections (filed July 5, 1994) at 2.

strongly oppose application of BPP to inmate telephone service.<sup>10/</sup>

Adopting BPP in the inmate environment and mandating reliance on network-based technology such as the LIDB to maintain security and combat fraud will abandon the substantial progress which RC&A and other IXC's serving the niche inmate telephone services market have already made toward maximizing prison administrator control and eliminating opportunities for inmates to commit fraud, harass third parties, and to participate in other criminal activities. Although a "network-based" technology, BPP is not superior to technologies installed today by specialized IXC's which have solved the major and unique problems of the inmate calling environment. BPP is an inferior system for the inmate market and should not be mandated.

**C. Exempting Inmate Calling Services From BPP Is Consonant With the Traditional Federal and State Recognition of Their Unique Regulatory Status and the Individualized Needs of the Inmate Calling Market**

In prior stages of this proceeding, the Commission received numerous comments documenting the special regulatory treatment of inmate calling services. Federal and state regulation of inmate telephone services has been distinguished from regulation of traditional operator services provided at aggregator locations. For example, the Commission, in its rulemaking implementing the Telephone Operator Consumer Services Improvement Act of 1990

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<sup>10/</sup> See, e.g., Comments of Washoe County Detention Facility, (July 7, 1994).



("TOCSIA"), CC Docket 90-313, recognized that inmate phone service providers should not be regulated in the same manner as other carriers providing operator assisted calls. The Commission concluded that the term "aggregator" does not apply to correctional institutions in situations in which they provide inmate-only phones, and that such inmate-only phone service presents an "exceptional set of circumstances" requiring their exclusion from the operator services regulations.<sup>11/</sup> State regulators, like the Commission in its previous rulemaking, have recognized the special nature of the inmate market and have distinguished inmate services from other intrastate operator services.

The distinctions recognized by this Commission and by state regulators apply fully in this proceeding and should be extended to the Commission's analysis of BPP. Inmate telephone services involve exceptional circumstances in which a prison administrator's control over inmate use of telephone service is a fundamental element of maintaining a disciplined prison environment. The end user choice and control underpinnings of traditional operator services regulation simply do not apply to the prison environment. Exempting inmate services from BPP because of the need for special treatment, technological safeguards and the type of end user involved, is strongly supported by regulatory precedent.

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<sup>11/</sup> Policies and Rules Concerning Operator Service Providers, 6 F.C.C. Rcd. 2744, 2752 at ¶ 15 (1991), reconsidered and clarified in part, 7 F.C.C. Rcd. 3882 (1992).

**D. The Commission Need Not Base An Exemption from BPP for Inmate Services on Rate Issues**

Given the substantial bases described above for an inmate services exemption from BPP, it is unnecessary for the Commission to consider an exemption to be based on whether a prison subscribes "to an OSP that charges rates below that of the dominant carrier for inter and intraLATA calls."<sup>12/</sup> If the Commission believes that some inmate service providers' rates may not be justified, the Commission has authority to address that concern directly, rather than addressing that concern indirectly through BPP. Direct Commission action with respect to those rate concerns is a practical option that would be less expensive and resource intensive to administer than BPP with respect to inmate service providers. Moreover, marketplace forces have already set important rate limits, which should minimize the level of Commission oversight required, because prison authorities tightly control rate levels to be charged as part of their presubscription contracts with IXC's.<sup>13/</sup>

Accordingly, the Commission should exempt inmate services from BPP not based on a rate limitation, but because BPP is unsuited to meet the special needs and unique nature of the inmate telephone services market. If the Commission is concerned with rate levels for a minority of inmate services, it is more efficient for the Commission to exercise its specific authority

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<sup>12/</sup> Further Notice at ¶ 51.

<sup>13/</sup> See, e.g., Comments of Monmouth County Correctional Institution at 3.

to address that issue directly rather than indirectly with the implementation of BPP.

### **CONCLUSION**

As demonstrated above, the Commission should exempt BPP's application to inmate telephone services if it decides to adopt BPP for other 0-dialed interLATA calls. If BPP is mandated for inmate telephone services, this niche market will suffer a severe technological setback which will increase the potential for fraud and harassment by inmates and increase financial administration burdens for prison authorities. Reliable and secure calling systems deployed by carriers such as RC&A are now the industry norm for inmate calling services and efficiently fulfill the needs of inmates and prison authorities. The live operators of all IXCs lack sufficient expertise to reliably handle the special case of inmate calls in a BPP system. Further, BPP would destroy competitive market incentives for constant technical improvement and fast, responsive problem-solving by IXCs under presubscription arrangements.

For all of the reasons discussed herein, RC&A respectfully submits that the public interest requires inmate telephone services to be exempted from BPP if the Commission mandates BPP for other 0-dialed interLATA traffic.

Respectfully submitted,

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